

Chapter SPS 34

FIREARMS AND OTHER DANGEROUS WEAPONS

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Note: Chapter RL 34 was renumbered chapter SPS 34 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671.

SPS 34.001 Authority. The rules in this chapter are adopted pursuant to ss. 227.11 (2) and 440.26 (3m) and (5r), Stats.

History: Cr. Register, November, 1997, No. 503, eff. 12–1–97.

SPS 34.002 Definitions. In addition to definitions under s. 30.02, in this chapter:

(1) “Carry” has the meaning given in s. 175.60 (1) (ag), Stats.

Note: Section 175.60 (1) (ag), Stats., reads: “ ‘Carry’ means to go armed with.”

(2) “Dangerous weapon” has the meaning given in s. 939.22 (10), Stats.

Note: Section 939.22 (10), Stats., reads: “ ‘Dangerous weapon’ means any firearm, whether loaded or unloaded; any device designed as a weapon and capable of producing death or great bodily harm; any ligature or other instrumentality used on the throat, neck, nose, or mouth of another person to impede, partially or completely, breathing or circulation of blood; any electric weapon, as defined in s. 941.295; or any other device or instrumentality which, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm.”

(3) “Weapon” has the meaning given in s. 175.60 (1) (j), Stats.

Note: Section 175.60 (1) (j), Stats., reads: “ ‘Weapon’ means a handgun, an electric weapon, as defined in s. 941.295 (1c) (a), a knife other than a switchblade knife under s. 941.24, or a billy club.”

History: CR 14–014; cr. Register August 2014 No. 704, eff. 9–1–14.

SPS 34.01 General conditions relating to carrying a firearm. (1) No owner or employee of an agency may carry any firearm unless all of the following conditions are met:

(a) The circumstances or conditions of the owner’s or employee’s assignment as a private security person give rise to a substantial need for being armed.

(am) The agency requires the owner or employee to carry a firearm when acting as a private security person.

(b) The client and the agency agree in writing that the agency will assign armed security personnel to the client.

(c) The agency has received a permit from the department pursuant to s. SPS 34.015.

(d) The owner or employee is not prohibited from possessing a firearm under s. 941.29, Stats., or any federal law.

(e) Subject to ss. 111.321, 111.322 and 111.335, Stats., the owner or employee has not been convicted of a misdemeanor.

(g) The owner or employee complies with all federal or state laws or local ordinances when carrying a firearm.

(h) The owner or employee does not hold a temporary private security permit issued under s. 440.26 (5r), Stats.

(i) The agency has obtained a comprehensive general liability policy pursuant to s. SPS 31.034.

(2) Except as provided in subs. (5) to (8), an owner or employee of any agency may not carry any concealed firearm at a time when he or she is on duty.

(3) Except as provided in subs. (5) to (8), a private detective may only carry a firearm when all the conditions in sub. (1) are satisfied. This subsection does not prohibit a private detective from having on, about or near his or her person a firearm that the private detective obtained and is holding as evidence in an investigation.

(5) A person who is employed in this state by a public agency as a law enforcement officer to carry a concealed firearm and if s. 941.23 (1) (g) 2. to 5. and (2) (b) 1. to 3., Stats., applies, may carry on, about, or near his or her person a firearm, concealed or otherwise, when acting as a private detective or private security person, without first obtaining a firearms permit granted by the department.

(6) A person who is a qualified out-of-state law enforcement officer, as defined in s. 941.23 (1) (g), Stats., to carry a concealed firearm and if s. 941.23 (2) (b) 1. to 3., Stats., applies, may carry on, about, or near his or her person a firearm, concealed or otherwise, when acting as a private detective or private security person, without first obtaining a firearms permit granted by the department.

(7) A person who is a former officer, as defined in s. 941.23 (1) (c), Stats., to carry a concealed firearm and if s. 941.23 (2) (c), Stats., applies, may carry on, about, or near his or her person a firearm, concealed or otherwise, when acting as a private detective or private security person, without first obtaining a firearms permit granted by the department.

(8) A person who is a licensee, as defined in s. 175.60 (1) (d), Stats., or an out-of-state licensee, as defined in s. 175.60 (1) (g), Stats., to carry a concealed weapon as permitted under s. 175.60, Stats., may carry on, about or near his or her person a firearm, concealed or otherwise, when acting as a private detective or private security person, without first obtaining a firearms permit granted by the department.

History: Cr. Register, October, 1988, No. 394, eff. 11–1–88; am. (1) (intro.), (a) to (c), cr. (1) (am), (d) to (g), (3) and (4), r. and recr. (2), Register, December, 1994, No. 468, eff. 1–1–95; am. (1) (intro.), cr. (1) (fm), Register, January, 1997, No. 493, eff. 2–1–97; am. (1) (b) and (d) and cr. (1) (h) and (i), Register, November, 1997, No. 503, eff. 12–1–97; am. (4), Register, January, 2001, No. 541, eff. 2–1–01; correction in (1) (c), (i) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671; CR 14–014; am. (1) (intro.), r. (1) (f), (fm), am. (1) (h), (2), (3), r. (4), cr. (5) to (8) Register August 2014 No. 704, eff. 9–1–14.

SPS 34.011 Conditions relating to transporting a loaded firearm in a vehicle. Except as provided in s. SPS 34.01 (5) to (8), no owner or employee of an agency may transport a loaded firearm in a vehicle; unless all of the following conditions are met:

(1) The firearm is in plain view. In this section “in plain view” means it is visible from ordinary observation to a person outside the vehicle.

Note: A firearm located in a glove compartment, in a briefcase, under a seat of a vehicle, or covered by the clothing of an occupant, is not “in plain view.”

(2) If the firearm is a handgun, the owner or employee transports the firearm in a holster which is in plain view.

(3) If the firearm is other than a handgun, the owner or employee transports the firearm in a device inside the vehicle which locks the firearm in position and prevents an unauthorized person from removing the firearm from the locking device and which is in plain view.

(4) The owner or employee complies with the requirements in s. SPS 34.01.

History: Cr. Register, January, 1977, No. 493, eff. 2–1–97; am. (intro.), Register, November, 1997, No. 503, eff. 12–1–97; correction in (4) made under s. 13.92 (4) (b)

7., Stats., Register November 2011 No. 671; CR 14–014; am. (intro.) Register August 2014 No. 704, eff. 9–1–14; correction in (intro.) made under s. 13.92 (4) (b) 1., Stats., Register August 2014 No. 704.

SPS 34.015 Application for a permit to carry a firearm. (1) An agency who applies for a license or permit under ch. SPS 31 shall apply to the department for a permit to authorize any of its owners or employees to carry a firearm when assigned to do so by the agency.

Note: For a copy of Form #2156, Procedures for Certification of Proficiency to Carry a Firearm, contact the department at phone: (608) 266–1212 or download the form from the department's webpage at <http://dps.wi.gov/Licenses-Permits/FirearmsPermit/FIREPforms>.

(2) The department may grant a permit to an agency pursuant to sub. (1) if the department has determined that all of the conditions and requirements in ss. SPS 34.01, 34.02, 34.03, and 34.10 have been satisfied by the agency and the owner or employee who will be assigned by the agency to carry a firearm while on duty.

(3) A permit shall only be valid while the owner or employee performs private security services for the agency to which the permit was granted. When an owner or employee transfers employment to another agency, the other agency shall obtain a new permit before requiring or permitting the owner or employee to carry a firearm.

(4) The department may deny an application submitted to it pursuant to sub. (1) or may suspend, limit or revoke a permit which it has granted, if the department determines that the conditions and requirements described in sub. (2) have not been satisfied or do not continue to be satisfied. The department shall grant a hearing pursuant to ch. SPS 1 or 2.

(6) The agency shall pay the reasonable costs incurred by the department in obtaining information relating to the eligibility and qualifications of each owner or employee to whom the permit applies, including the reasonable costs of criminal history record searches and if submitted with a license or permit application under ch. SPS 31, shall include costs of finger printing and a U.S. FBI–national instant criminal background check system (NICS) search.

History: Cr. Register, December, 1994, No. 468, eff. 1–1–95; r. (5), Register, January, 2001, No. 541, eff. 2–1–01; correction in (2), (4) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671; CR 14–014; am. (title), (1), (2), (6) Register August 2014 No. 704, eff. 9–1–14.

SPS 34.02 Certificates of proficiency to carry a firearm. (1) Before an agency may receive a permit from the department pursuant to s. SPS 34.015, the owner or employee who will be assigned to carry a firearm while on duty shall obtain a certificate of proficiency in the care, handling and use of a firearm.

Note: For a copy of Form #467, Firearms Certification of Proficiency–Initial Certification, contact the Department of Safety and Professional Services, Division of Professional Credential Processing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708–8935 or download the form from the department's webpage: <http://dps.wi.gov>.

(2) (a) Certification shall be received from a person who is approved as a firearms proficiency certifier by the department under s. SPS 34.04.

(b) The certificate shall be notarized and shall include at least:

1. A full and complete description of each type of firearm, the care, handling and use of which the owner or employee is proficient.

2. Statements to the effect that the owner or employee has successfully completed the training required in s. SPS 34.03. These statements shall include the date, time of day, the number of hours and the location where the owner or employee completed the training.

(3) A certificate of proficiency shall be valid for one year. An owner or employee shall renew a certificate of proficiency by satisfying the requirements in subs. (1) and (2), except that the training course shall consist of a 6–hour refresher course which more briefly covers the required course contents described in s. SPS 34.03 (1). A person approved as a firearms proficiency certifier under s. SPS 34.04 may satisfy the 6–hour training requirement

by conducting the 6–hour refresher course or the 36–hour course under s. SPS 34.03 (1).

(4) An owner or employee who has not obtained a certificate of proficiency under this section at any time during the 5 years preceding the issuance of a permit by the department pursuant to s. SPS 34.015 shall obtain a new certificate by successfully completing the full 36–hour course, as required in s. SPS 34.03.

History: Cr. Register, October, 1988, No. 394, eff. 11–1–88; r. and recr. Register, December, 1994, No. 468, eff. 1–1–95; am. (3), Register, November, 1997, No. 503, eff. 12–1–97; correction in (1), (2) (intro.), (b), (3), (4) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671; CR 14–014; (2) (a), (b) renum. from (2) (intro.), am. (3) Register August 2014 No. 704, eff. 9–1–14.

SPS 34.03 Initial training requirements for carrying a firearm. (1) GENERAL REQUIREMENT. Except as provided in

sub. (2), completion of a training program of not less than 36 hours consisting of the following is required as a prerequisite for obtaining an initial certificate of proficiency to carry a firearm under s. SPS 34.02. The training program shall include all of the following:

(a) Instruction in the dangers relating to the use of the firearm, safety rules, care and cleaning of the firearm.

(b) Training in the care, handling and use of the firearm, provided in accordance with the current firearms training guide which the Wisconsin law enforcement standards board has approved for training Wisconsin law enforcement officers. When the Wisconsin law enforcement standards board has approved a new edition of the training guide to replace an older edition, training which is received after the date of which a new edition is approved may be based on the older edition for a period not to exceed 12 months after approval of the new edition by the board.

Note: The firearms training guide approved by the Wisconsin Law Enforcement Standards Board is available for inspection at the Division of Professional Credential Processing, 1400 East Washington Avenue, Madison, WI or download the guide from the department of justice webpage: <http://doj.wi.gov/>.

(c) Instruction in the legal use of firearms under the provisions of the Wisconsin criminal code and relevant court decisions.

(d) A presentation stressing the ethical and moral considerations which should be taken into account by any person who uses a firearm.

(e) A review of the law regarding lawful detentions.

(f) A review of the law on criminal and civil liability for intentional and negligent acts.

(2) EQUIVALENT TRAINING. A person who had received at least 30 hours of training, as described in sub. (1), except that the training did not include the provisions of Wisconsin law, as in sub. (1) (b) and (c), shall complete the 6–hour refresher course under s. SPS 34.02 (3) to satisfy sub. (1), provided the person was authorized by another licensing jurisdiction or governmental agency to carry a firearm while on duty as a peace officer, a person who stands watch for security purposes or as a private detective at any time during the 5 years preceding application for a permit under s. SPS 34.015.

History: Cr. Register, October, 1988, No. 394, eff. 11–1–88; r. and recr. Register, December, 1994, No. 468, eff. 1–1–95; correction in (1) (intro.), (2) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671; CR 14–014; am. (title), (1) (intro.) Register August 2014 No. 704, eff. 9–1–14.

SPS 34.04 Approval as a firearms proficiency certifier. (1) Before certifying the proficiency of an owner or

employee to carry a firearm pursuant to s. SPS 34.02, an individual shall obtain the approval of the department by submitting an application to the department on a form prepared by the department.

Note: Form #1912, Application For Approval of Firearms Proficiency Certifier, may be obtained from the Department of Safety and Professional Services, Division of Professional Credential Processing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708–8935 or download from the department's webpage: <http://dps.wi.gov/Licenses-Permits/FirearmsCertifier/FIRECforms>.

(1m) A peace officer is not required to file with the department fingerprints under sub. (5), provided that the peace officer submits with the application for approval a letter from his or her employing law enforcement agency, written not more than one

month before the date of the application and stating that the person is currently employed as a peace officer by the law enforcement agency.

(2) An applicant for approval as a firearms proficiency certifier shall at the time of application meet all of the following qualifications:

(a) The individual shall have received training as a police or security firearms instructor and shall provide evidence of one of the following:

1. Current approval as a firearms instructor by the Wisconsin law enforcement standards board.

2. Current certification as a law enforcement firearms instructor by the national rifle association of America, inc.

3. At any time on or after January 1, 1995, was approved as a firearms instructor by the Wisconsin law enforcement standards board, or certified as a law enforcement firearms instructor, or a substantially equivalent designation, by the national rifle association of America, inc. and has completed a 6-hour firearms instructor refresher course within 12 months before application for approval by the department. The refresher course shall be presented by a regional training school approved by the Wisconsin law enforcement standards board or by a staff instructor in the law enforcement activities division of the national rifle association.

4. Current certification or approval as a firearms instructor from a school in the Wisconsin technical college system, that certifies or approves firearms instructors in a manner which the department determines achieves equivalency to one of the outcomes prescribed in subds. 1. to 3.

5. Current certification or approval as a firearms instructor from an institution approved by the U.S. department of education, that certifies or approves firearms instructors in a manner which the department determines achieves equivalency to one of the outcomes prescribed in subds. 1. to 3.

(b) Notwithstanding ss. 111.321, 111.322 and 111.335, Stats., the individual shall not have been convicted of a felony and is not prohibited from possessing a firearm under any state or federal law.

(c) The individual has, subject to ss. 111.321, 111.322 and 111.335, Stats., not been charged with a crime or convicted of a misdemeanor.

(4) The department may deny an application submitted to it pursuant to sub. (1) or may suspend, limit or revoke an approval granted under this section, if the department determines that the conditions and requirements described in sub. (2) have not been satisfied or do not continue to be satisfied. The department shall grant a hearing pursuant to ch. SPS 1 or 2.

(5) Except as provided in sub. (1m), an applicant shall submit to the department two complete and satisfactory sets of fingerprints as specified under s. SPS 31.03 (1) (b), in order to carry a firearm and the department may obtain a criminal history record search from the Wisconsin department of justice and the federal bureau of investigation relating to the applicant before initially granting a permit for that individual.

(6) The applicant shall pay the reasonable costs incurred by the department in obtaining information relating to the eligibility and qualifications of the applicant, including the reasonable costs of criminal history record searches.

Note: Form #1912, Application For Approval of Firearms Proficiency Certifier, may be obtained from the Department of Safety and Professional Services, Division of Professional Credential Processing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708–8935 or download from the department's web page: <http://dsps.wi.gov/Licenses-Permits/FirearmsCertifier/FIRECforms>.

(7) The approval of a firearms proficiency certifier shall expire on December 31 of each even-numbered year, unless the firearms proficiency certifier submits to the department an application for renewal on a form prescribed by the department and is reapproved by the department.

History: Cr. Register, October, 1988, No. 394, eff. 11–1–88; r. and recr. Register, December, 1994, No. 468, eff. 1–1–95; r. (3) and cr. (4), (5) and (6), Register, November, 1997, No. 503, eff. 12–1–97; cr. (1m), (2) (a) 1., 2., 3., (7), am. (2) (intro.), (b), (5) and (6), renum. (2) (a) to be (2) (a) (intro.), Register, January, 2001, No. 541, eff. 2–1–01; correction in (1), (4) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671; EmR1308: emerg. cr. (2) (a) 4., 5., eff. 6–13–13; CR 13–047: cr. (2) (a) 4., 5. Register February 2014 No. 698, eff. 3–1–14; CR 14–014: am. (2) (a) 2., 3., (4) to (7) Register August 2014 No. 704, eff. 9–1–14.

SPS 34.05 Agency firearms policy and laws.

(1) Each agency shall file with the department a copy of its firearms policy before any of its owners or employees may receive a permit granted by the department pursuant to s. SPS 34.015 and thereafter within 30 days after any substantial changes to its firearms policy.

Note: For filing of an agency's firearms policy, mail the policy to the Department of Safety and Professional Services, Division of Professional Credential Processing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708–8935.

(2) Each agency shall maintain a current copy of ss. 939.48 and 939.49, Stats., relating to the use of force, and shall make these documents accessible to its owners and employees.

History: Cr. Register, October, 1988, No. 394, eff. 11–1–88; am. Register, December, 1994, No. 468, eff. 1–1–95; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671; CR 14–014: am. Register August 2014 No. 704, eff. 9–1–14.

SPS 34.06 Reporting the discharge of a firearm.

If any owner or employee of an agency is responsible for the accidental or intentional discharge of any firearm other than in target practice, competition, or licensed hunting, or is responsible for the accidental or intentional use of deadly force by any means, the owner or employee shall immediately after the incident notify the local law enforcement agency where the incident took place and inform his or her supervisor of the incident. The supervisor or another person assigned by the agency shall investigate the incident as soon as possible, and shall make a signed, written report of the incident, identifying all persons involved in the incident, the investigator, and the agency, and fully describing the circumstances of the incident. As soon as possible after the investigation is completed, a copy of the report shall be filed with the department and with the local law enforcement agency.

History: Cr. Register, October, 1988, No. 394, eff. 11–1–88; am. Register, December, 1994, No. 468, eff. 1–1–95; am. Register, August, 1995, No. 476, eff. 9–1–95.

SPS 34.07 Other dangerous weapons. An owner or employee of an agency may only be armed with a dangerous weapon other than a firearm, which he or she, based on training, is proficient in handling. The person shall understand the legal limits of force with the weapon, the dangers and misuse of the weapon and the safety rules relating to the weapon. The agency shall, upon request of the department, provide documentation of the training or experience which prepared the person to be proficient in the use of the weapon.

History: Cr. Register, October, 1988, No. 394, eff. 11–1–88; am. Register, December, 1994, No. 468, eff. 1–1–95.

SPS 34.08 Replica or facsimile of a firearm. No owner or employee of an agency may, at any time while he or she is on duty, carry on, about, or near the person, concealed or otherwise, an object that looks like a firearm, but is not.

History: Cr. Register, December, 1994, No. 468, eff. 1–1–95; am., Register, November, 1997, No. 503, eff. 12–1–97; CR 14–014: am. Register August 2014 No. 704, eff. 9–1–14.